



October 13, 2021

Exemption No. 8702H  
Regulatory Docket No. FAA-2005-20788

Mr. Larry D. Kelley  
Delaware Aviation Museum Foundation  
21781 Aviation Avenue  
Georgetown, DE 19947

Dear Mr. Kelley:

This letter is to inform you that the Federal Aviation Administration (FAA) has granted your petition to extend Exemption No. 8702G. This letter transmits the FAA's decision, explains the FAA's basis, and provides the conditions and limitations of the exemption, including the date the exemption ends.

### **The Basis for the FAA's Decision**

By letter dated June 14, 2021, you petitioned the FAA on behalf of Delaware Aviation Museum Foundation (DAMF) for an extension of Exemption No. 8702G. That exemption from §§ 91.9, 91.315, 119.5(g), and 119.21(a) of Title 14, Code of Federal Regulations (14 CFR) to the extent necessary to allow DAMF to operate the museum's aircraft for the purpose of carrying passengers for compensation or hire for living history flight experiences (LHFE).

In your petition, you indicate that there has been no change in the conditions and reasons relative to public interest and safety that were the basis for granting the original exemption.

### **The FAA's Decision**

The FAA has determined that good cause exists for not publishing a summary of the petition in the *Federal Register*. The FAA has determined that good cause exists because the requested extension of the exemption would not set a precedent and any delay in acting on this petition would be detrimental to DAMF.

In addition, the FAA notes that your petition for extension continues to meet all criteria and requirements for Living History Flight Experience Exemption operations as published in the FAA Policy (see Condition and Limitation No. 2 below).<sup>1</sup>

By this document, the FAA also clarifies the relief granted from the applicability of § 91.9(a), which prescribes as follows:

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<sup>1</sup> July 21, 2015, 80 FR 43012, <https://www.federalregister.gov/documents/2015/07/21/2015-17966/policy-regarding-living-history-flight-experience-exemptions-for-passenger-carrying-operations>

“No person may operate a civil aircraft without complying with the operating limitations specified in the approved Airplane or Rotorcraft Flight Manual, markings, and placards, or as otherwise prescribed by the certificating authority of the country of registry.”

Aircraft used in LHFE operations generally have an operating limitation that prohibits operation for compensation or hire while carrying persons or property. The relief this exemption grants from the applicability of § 91.9(a) only applies to this specific operating limitation, to the extent necessary to conduct operations pursuant to the exemption. All other operating limitations remain in effect and apply to all operations of the aircraft listed in this exemption, including operations conducted for the purpose of LHFE flights. Condition and Limitation No. 23 is amended to reflect this clarification.

Additionally, the FAA is revising Condition and Limitation No. 6 to better describe LHFE aircraft maintenance requirements.

The FAA has determined that the justification for the issuance of Exemption No. 8702G remains valid with respect to this exemption and is in the public interest. Therefore, under the authority provided by 49 U.S.C. §§ 106(f), 40113, 44701, and 44807, which the FAA Administrator has delegated to me, I hereby grant Delaware Aviation Museum Foundation an exemption from 14 CFR §§ 91.9, 91.315, 119.5(g), and 119.21(a) to the extent necessary to allow DAMF to operate aircraft for the purpose of carrying passengers for compensation or hire for living history flight experiences, subject to the following conditions and limitations.

Please note that DAMF’s compliance with the conditions and limitations are the FAA’s means of ensuring operations conducted under the exemption would not adversely affect safety. This may necessitate limitations that go beyond the established regulations because the proposed operation is, by its need for an exemption, outside the normal regulatory structure. In addition, the FAA may, when necessary, revise the conditions and limitations or require corrective action in order to mitigate safety concerns and risk factors adequately, as they become known. This amended exemption cancels any Conditions and Limitations appended to previous exemptions. Please review and comply with the following Conditions and Limitations as they differ in many respects from previous exemptions.

### **Conditions and Limitations**

1. This exemption applies only to the aircraft listed below:
  - a. B-25J, N9079Z, Serial No. 44-30734
2. DAMF must maintain and apply, on a continuous basis, an operational control structure that meets the criteria specified in the FAA Living History Flight Experiences policy, hereinafter referred to as The FAA Policy, that was published on July 21, 2015 (80 FR 43012). The DAMF Manual System must contain adequate information concerning operational control.

3. DAMF must maintain and apply, on a continuous basis, its Manual System, to include all documents contained herein, used as its basis for an equivalent level of safety, for all operations subject to this exemption. This system must continue to ensure all criteria in The FAA Policy are continuously met, including the conditions and limitations of this exemption. DAMF will be assigned a jurisdictional Flight Standards District Office (FSDO). DAMF must provide its manual system documents, including revisions, in a form and manner acceptable to the DAMF jurisdictional FSDO. Manual and document revisions and a record of revisions must be provided to the jurisdictional FSDO within 10 days of any changes. These documents include, at a minimum:
  - a. DAMF General Operations Manual (GOM);
  - b. DAMF Pilot Qualifications and Training Manual;
  - c. DAMF General Maintenance Manual (GMM);
  - d. DAMF Safety Management System (SMS) Manual; and
  - e. DAMF FAA-Approved Aircraft Inspection Program (AAIP), for those aircraft that require compliance with an AAIP.
4. All persons who participate in DAMF's program and operations must initially, and on an annual basis, receive training appropriate to their position on the contents and application of DAMF's Manual System, safety and risk management program, and the conditions and limitations set forth in this exemption.
5. DAMF must maintain and apply, on a continuous basis, its safety and risk management program that meets or exceeds the criteria specified in The FAA Policy for all operations subject to this exemption. This includes, at a minimum, the DAMF Safety Management System (SMS), used as a basis for an equivalent level of safety.
6. DAMF must maintain all aircraft subject to this exemption in accordance with the—
  - a. DAMF General Maintenance Manual;
  - b. For aircraft subject to § 91.409(e), an FAA-approved maintenance inspection program. All other aircraft must, notwithstanding § 91.409(c), maintain the aircraft in accordance with § 91.409(a) and (b); and
  - c. Appropriate military technical publications.
7. DAMF must document and record all ground and flight training and testing. The documentation and records must contain, at minimum, the following information:
  - a. The date of each training or testing session;
  - b. The amount of time spent for each session of training given;

- c. The location where each session of training was given;
  - d. The airplane identification number(s) in which flight training and testing was received;
  - e. The name and certificate number (when applicable) of the instructor who provided each session of training;
  - f. The name and certificate number of the pilot who provided each session of testing; and
  - g. For verification purposes, the signature and printed name of the person who received the training or testing.
8. No person may serve as a flight crewmember unless, since the beginning of the 12th calendar month before that service, that pilot has completed all DAMF - and FAA-required training, and passed a competency check given by the FAA or an authorized check pilot in that aircraft, to determine the pilot's competence in practical skills and techniques. The competency check will consist of the maneuvers and procedures currently required for the original issuance of the commercial pilot certificate, except that an actual engine shutdown, restart and propeller feathering exercise, for those pilots already holding the appropriate Type Rating or Experimental Authorization, is not required. This information must also be documented in accordance with Condition and Limitation No. 7 and Condition and Limitation No. 9(b).
9. DAMF must maintain the following information and records:
- a. The name of each flight crewmember DAMF authorizes to conduct flight operations under the terms and conditions of this exemption;
  - b. Copies of each flight crewmember's pilot certificate, medical certificate, qualifications, and initial and recurrent training and testing documentation to comply with these conditions and limitations;
  - c. The name of each mechanic DAMF authorizes to conduct maintenance operations under the terms and conditions of this exemption;
  - d. Copies of each mechanic's certificate, qualifications, and initial and recurrent training, and testing documentation to comply with the terms and conditions of this exemption; and
  - e. Records of maintenance performed, and maintenance inspection records to comply with the conditions above. Maintenance and inspection records must meet the requirements of 14 CFR §§ 43.9, 43.11, and 91.405.

10. DAMF must make available to the FAA, upon request, any manual, document or record used to meet the criteria specified in The FAA Policy and these conditions and limitations.
11. Before permitting a person to be carried on board an aircraft for the purposes authorized under this exemption, DAMF must inform that person of the type of airworthiness certificate issued for the aircraft in which the operation will occur, and the significance of that certificate as compared to a Standard Airworthiness Certificate.
12. DAMF must notify the jurisdictional FSDO within 24 hours of any of the following occurrences by written report, by electronic mail, or by facsimile:
  - a. Each in-flight fire in any system or area that requires activation of any fire suppression system or discharge of a portable fire extinguisher;
  - b. Each exhaust system component failure including the turbocharger components that causes damage to any engine, structure, cowling, or components;
  - c. Each aircraft component or system that causes, from the moment the aircraft leaves the surface of the earth on takeoff until it touches down on landing, accumulation or circulation of noxious fumes, smoke, or vapor in any portion of the cabin or crew area;
  - d. Except when intentional for training, each occurrence of engine shutdown or propeller feathering, and the reason for such shutdown or feathering;
  - e. Each failure of the propeller governing system or feathering system;
  - f. Any landing gear system or component failure or malfunction, which requires use of emergency or standby extension systems;
  - g. Each failure or malfunction of the wheel brake system that causes loss of brake control on the ground;
  - h. Each aircraft structure that requires major repair due to damage, deformation, or corrosion and the method of repair;
  - i. Each failure or malfunction of the fuel system, tanks, pumps, or valves;
  - j. Each malfunction, failure, or defect in any system or component that requires taking emergency action of any type during the course of any flight.
13. All flight operations must be conducted —
  - a. In compliance with a minimum operating altitude of not less than;

- i. 1,000 feet above the surface for airplanes;
    - ii. 500 feet above the surface for helicopters;
  - b. Between the hours of official sunrise and sunset, as established in the Air Almanac, as converted to local time;
  - c. Within a 50-statute-mile radius of the departure airport with landings only permitted at the departure airport;
  - d. With a minimum flight visibility of not less than 3 statute miles and a minimum ceiling of not less than 1,500 feet above the surface;
  - e. For passenger-carrying flights greater than 25 statute miles from the departure airport and up to 50 statute miles, the pilot-in-command (PIC) must obtain weather reports and forecasts prior to flight and valid for the duration of the proposed operation that indicate that the weather is expected to be no less than 5 statute miles visibility and cloud ceilings no less than 2,000 feet AGL. Passenger-carrying operations shall be terminated if ceiling and visibility become less than the minimum required by these conditions and limitations. Weather forecasts listing discriminators such as probability (PROB), becoming (BECMG), or temporarily (TEMPO) shall be limiting; and
  - f. Operations conducted for the purpose of dispersing human remains must comply with applicable Federal, State, and local laws and regulations governing the dispersal of human remains.
14. All flight operations must carry no more than the maximum number of passengers permitted by the aircraft's weight and balance limitations and number of approved seats in the aircraft.
  15. The aircraft must have the equipment listed in §§ 91.205(b) and 91.207, all of which must be in an operable condition during the flight.
  16. No later than 72 hours prior to commencing flight operations under the terms of this exemption, DAMF must notify the FSDO having geographic responsibility where it intends to conduct the flight operations and shall provide a copy of this exemption upon request.
  17. Aerobatic flight is prohibited while passengers are on board the aircraft.
  18. Flight within 500 feet of another aircraft is prohibited.
  19. Prior to flight, the PIC must ensure that a passenger briefing meeting the scope and content of § 135.117 has been provided to the passengers.

20. Only those listed by DAMF as a qualified PIC or second-in-command (SIC) for the aircraft, may occupy a pilot station, or manipulate the flight controls.
21. DAMF must operate all flights in accordance with its Manual System, the applicable regulations, and the conditions and limitations of this exemption, and is bound by whichever is more restrictive. DAMF must comply with all operating limitations that apply to aircraft utilized in accordance with this exemption, with the exception of any operating limitation prohibiting carriage of persons or property for compensation or hire or other relief specifically provided by this grant of exemption.
22. Failure to comply with any of these conditions and limitations is grounds for the immediate suspension or revocation of this exemption.
23. The Philadelphia FSDO is the jurisdictional Flight Standards District Office for DAMF and is responsible for oversight of DAMF for all matters pertaining to this exemption and the operation of the aircraft under this exemption.
24. This exemption is not valid for operations outside of the United States of America.

#### **The Effect of the FAA's Decision**

The FAA's decision amends Exemption No. 8702G to 8702H and extends the termination date to November 30, 2023, unless sooner superseded or rescinded.

To request an extension or amendment to this exemption, please submit your request by using the Regulatory Docket No. FAA-2005-20788 (<http://www.regulations.gov>). In addition, you should submit your request for extension or amendment no later than 120 days prior to the expiration listed above, or the date you need the amendment, respectively.

Any extension or amendment request must meet the requirements of 14 CFR § 11.81.

Sincerely,

/s/

Robert Carty  
Acting Executive Director, Flight Standards Service